

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COLEMAN CABLE, INC.,
Plaintiff,
v.
TDE, INC., and MONTE A. LEEN,
Defendants.

Case No. C12-1243RSL

**ORDER DENYING PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

This matter comes before the Court on “Plaintiff’s Motion for Protective Order Regarding Requested Documents.” Dkt. # 31. Plaintiff alleges that defendants breached an Asset Purchase Agreement between the parties by, among other things, failing to turn over \$340,817 in cash that was in defendants’ possession on the closing date. Defendants concede that a separate payment marked “cash” was not made, but argue that they overpaid or transferred accounts receivable to such an extent that some or all of the obligation to transfer cash assets was satisfied. Defendants seek information regarding payments made directly to plaintiff after April 1, 2011, and how they were credited.

The accounting related to the Asset Purchase Agreement was apparently muddled with plaintiff's on-going operations. In order to locate payment information regarding relevant sales and to ascertain whether a payment related to a pre-transaction sale (in which case the payment offsets the amount owed by defendants) or a post-transaction sale (in which case the payment is unrelated to the Asset Purchase Agreement), plaintiff will have to manually review

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1 daily packets of remittances in an effort to link them to invoices, the date of which will allow the
2 parties to appropriately characterize the payment. Plaintiff argues that this burdensome search is
3 entirely unnecessary because the characterization of the payments is not an issue: plaintiff relies
4 on the fact that the total amount transferred to plaintiff from defendants between April and
5 October 2011 does not equal the total amount owed and that, regardless of the characterization,
6 defendants owe plaintiff money. There is some indication, however, that defendants transferred
7 \$4,149,691 in assets¹ to plaintiff, more than enough to cover the \$2,737,264 required under the
8 Asset Purchase Agreement (the only contract at issue in this litigation). Although plaintiff
9 argues that a large portion of the assets transferred from defendants reflects irrelevant sales
10 occurring after the closing date, it is exactly that contention which defendants want to test. If,
11 for example, plaintiff simply characterized all payments made after the transition period (or
12 some other arbitrary date) as payments related to post-closing sales, their calculations would
13 undoubtedly be skewed in their favor. Defendants must be permitted to review the underlying
14 documents on which plaintiff's accounting summaries are based as the only means of confirming
15 the summaries' accuracy. The burden of having to review daily remittance information
16 (estimated at 30 and 300 transactions a day for a six month period) is not insubstantial, but
17 plaintiff cannot assert a claim for failure to pay and then refuse to turn over relevant payment
18 information.

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20 For all of the foregoing reasons, plaintiff's motion for a protective order is
21 DENIED. Plaintiff shall, within fourteen days of the date of this Order, provide the requested
22 documents or produce them as they are kept in the usual course of business in accordance with
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24
25 ¹ Plaintiff appears to have accepted a transfer of \$2,481,236 from defendants at the end of the
transition period, collected another \$934,301 directly from defendants' customers, and taken over
\$734,154 in accounts receivable that had been invoiced but not yet paid.
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Fed. R. Civ. P. 34(b)(E).

Dated this 4th day of September, 2013.

Mrs Casnik

Robert S. Lasnik
United States District Judge

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